

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation
Against:

NANCY ELLEN RIFKIND
2309 Glendale
Modesto, California 95345
License No. K 428060

Respondent

No. 93-194

OAH No. N-08065

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before Leonard L. Scott, Administrative Law Judge of the Office of Administrative Hearings, at Modesto, California, on December 23, 1993. Luana L. Martilla, Deputy Attorney General, represented the complainant. Nancy Ellen Rifkind, Respondent appeared in her own behalf.

Oral and documentary evidence was received, the record was closed and the matter submitted. The proposed decision of the Administrative Law Judge was submitted to the Board of Registered Nursing (hereinafter board) on or about January-28, 1994. After due consideration thereof, the board declined to adopt said proposed decision and thereafter on April 28, 1994, issued a Notice of Nonadoption. On June 9, 1994, the board subsequently issued an Order Fixing Date for Submission of Written Argument, allowing the submission of written argument on or before July 11, 1994.

The time for filing written argument in this matter having expired, written argument having been filed by Respondent and such written argument, together with the entire record, including the transcript of said hearing, having been read and considered, pursuant to Government Code Section 11517, the board hereby makes the following decision and order:

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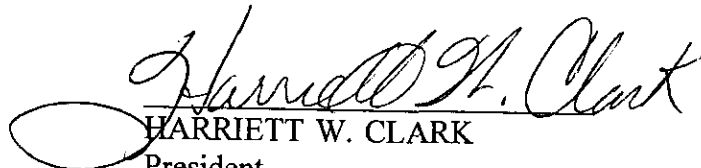
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ORDER

The board hereby adopts the attached Proposed Decision of the Administrative Law Judge, dated January 28, 1994 as its decision in this matter.

This decision shall become effective on September 24, 1994.

IT IS SO ORDERED this 24th day of August, 1994.


HARRIETT W. CLARK
President
Board of Registered Nursing

II

On August 31, 1988, the Board issued registered nurse license number 428060 to respondent. The license has been in full force and effect at all times since issued and will expire on December 31, 1995, if not renewed.

III

In 1988, a complaint was filed with the Arizona State Board of Nursing (Arizona Board) charging respondent with violation of the Arizona Nurse Practice Act. Respondent and the Arizona Board entered into a written settlement of that disciplinary action in a document entitled "Consent Agreement and Order", which was dated October 6, 1988. In the Consent Agreement and Order respondent admitted violating Arizona Revised Statutes, section 32-1663(D)(3) and (4) and the Arizona Board's Rules and Regulations (A.C.R.R.), sections R4-19-403(1) and (12). The Consent Agreement and Order placed respondent's Arizona nursing license on probation for 24 months with various terms and conditions.

On November 21, 1991, the Arizona State Board of Nursing (Arizona Board), after a hearing at which respondent was present, suspended respondent's Arizona Professional Nurse License for six months, to be followed by twenty-four months of probation with various terms and conditions. The November 1991 discipline was based upon respondent's violation of the terms and conditions of probation contained in the "Consent Agreement and Order", dated October 6, 1988. Respondent's violation of those 1988 terms and conditions also violated Arizona Revised Statutes, sections 32-1606(D) and 32-1663(D)(7).

IV

Respondent is 34 years old. She is her own sole means of support. As a teenager, she dropped out of high school. She later got her high school GED. She graduated from the nursing program at the University of Arizona in Tucson and was licensed as a Professional Nurse in Arizona in about 1986. She worked at a hospital in Arizona, then moved to Nevada and got a license there. She worked at the Washoe Medical Center for about five months. In June of 1988, she went on a four-day drug binge and was unable to return to work for a scheduled shift. She called an "800" telephone number and was referred to an inpatient drug treatment program in Modesto. She successfully completed the 30 day inpatient program at Modesto Psychiatric Center. Afterward, she attended 12-step meetings in Modesto and moved there. She applied for and received a California Registered Nursing license. She went into the diversion program in California in 1988 at the recommendation of the Board. The California diversion program and her 1988 Arizona probation prohibited her from working for a

registry. When she lost her job at Memorial Hospital in Modesto, she was unable to find another. She ran out of money after several weeks of looking for a job and took one through a registry. In 1989, she was dismissed from the California diversion program for violating her diversion program contract by working through a registry, working nights and dispensing controlled substances to patients.

Since then, she has worked at a nursing facility in Manteca for about four to five months, at Emmanuel Hospital in Turlock for about two and one-half years, at Oak Valley Hospital in Oakdale for about a year and, for the last year, at Merced Community Medical Center in Merced. Her present employer is aware of her license discipline in Arizona.

Respondent used heroin and cocaine on and off from about age 13 but has been clean and sober since June of 1988. She attends the Sunday Narcotics Anonymous meetings at Memorial Hospital in Modesto each week and is working through the 12 steps with her sponsor. She has a urine test each month. She has worked hard to stay off drugs since June of 1988 and intends to continue with it. She likes being able to support herself and pay her bills on time, which she could not do when she was on drugs. She would like to keep her license.

DETERMINATION OF ISSUES

I

Respondent has subjected her license to discipline for violation of Business and Professions Code sections 2761(a) and (k) and 2762 as found in Finding III.

II

Respondent presented significant evidence of her efforts to rehabilitate herself and overcome her addiction to drugs, as found in Finding IV.

ORDER

The license issued to respondent is revoked. However, the revocation is stayed and respondent is placed on probation for two (2) years on the following terms and conditions:

1. Respondent shall obey all federal, state and local laws, and all rules, and regulations of the Board

of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.

2. Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Program.
3. Respondent, during the period of probation, shall appear in person at interviews/meetings as directed by the Board or its designated representatives.
4. Periods of residency or practice outside of California will not apply to the reduction of this probationary term. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.
5. Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.
6. Respondent, during the period of probation, shall engage in the practice of professional nursing in California for a minimum of 24 hours per week (or as determined by the Board) for 6 consecutive months. Per section 2732 of the Business and Professions Code, no person shall engage in the practice of registered nursing without holding a license which is in an active status.
7. The Board shall be informed of and approve of each agency for which the respondent provides nursing services prior to respondent's commencement of work. The respondent shall inform respondent's employer of the reason for and the terms and conditions of probation and shall provide a copy of the Board's decision and order to respondent's employer and immediate supervisor. The employer shall submit performance evaluations and other reports as requested by the Board. Respondent is

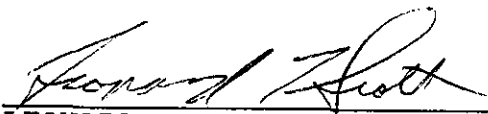
also required to notify the Board in writing within seventy-two (72) hours after termination of any nursing employment. Any notification of termination shall contain a full explanation of the circumstances surrounding it.

8. The Board shall be informed of and approve of the level of supervision provided to the respondent while respondent is functioning as a registered nurse. The appropriate level of supervision must be approved by the Board prior to commencement of work. Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing.
9. Respondent may not work for a nurse registry; temporary nurse agency; home care agency; in-house nursing pool; as a nursing supervisor; as a faculty member in an approved school of nursing; or as an instructor in a Board approved continuing education program. Respondent must work only on regularly assigned, identified and predetermined worksite(s) with appropriate supervision as approved by the Board.
10. If a respondent violates the conditions of respondent's probation, the Board, after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the discipline (revocation) of respondent's license.
11. If during the period of probation, an accusation has been filed against respondent's license or the Attorney General's office has been requested to prepare an accusation against respondent's license, the probation period shall automatically be extended and shall not expire until the accusation has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.
12. Respondent must attend two 12-step recovery meetings per week (e.g., Narcotics Anonymous, Alcoholic Anonymous, etc.) and a nurse support group as directed by the Board. If a nurse support group is not available, an additional 12-step meeting must be added. Respondent must submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

13. Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are lawfully prescribed by a licensed physician or dentist as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing physician or dentist, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, and the date the medication will no longer be required.
14. Respondent, at respondent's expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for ensuring that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent will be considered in violation of probation.

In addition, respondent, at any time during the period of probation shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

Dated: January 28, 1994


LEONARD L. SCOTT
Administrative Law Judge
Office of Administrative Hearings

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of the State of California
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7

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA
11

12 In the Matter of the Accusation)
Against:)

No. 93-194

13 NANCY ELLEN RIFKIND)
14 2309 Glendale)
Modesto, California 95354)
15 License No. K 428060)

ACCUSATION

16 Respondent.)
17

18 Catherine M. Puri, R.N., Ph.D., for causes for
19 discipline, alleges:
20

21 1. Complainant Catherine M. Puri, R.N., Ph.D., makes
22 and files this accusation in her official capacity as Executive
23 Officer, Board of Registered Nursing, Department of Consumer
24 Affairs.
25

26 2. On August 31, 1988, the Board of Registered Nursing
27 issued registered nurse license number K 428060 to Nancy Ellen

1 Rifkind. The license was is full force and effect at all times
2 pertinent herein and has been renewed through December 31, 1993.

3
4 3. Under Business and Professions Code section 2750,
5 the Board of Registered Nursing may discipline any licensee,
6 including a licensee holding a temporary or an inactive license,
7 for any reason provided in Article 3 of the Nursing Practice Act.

8 Under Business and Professions Code section 2764, the
9 expiration of a license shall not deprive the Board of Registered
10 Nursing of jurisdiction to proceed with a disciplinary proceeding
11 against the licensee or to render a decision imposing discipline
12 of the licensee.

13 Under Business and Professions Code section 118(b), the
14 expiration of a license shall not deprive the board of
15 jurisdiction to proceed with a disciplinary action during the
16 period within which the license may be renewed, restored,
17 reissued, or reinstated. Under Business and Professions Code
18 section 2811, the board may renew an expired license within a
19 period of eight years after the expiration.

20
21 4. Respondent has subjected her license to discipline
22 under Business and Professions Code section 2761(k) in that on
23 November 21, 1991, the Arizona State Board of Nursing suspended
24 respondent's nursing license for six months under terms and
25 conditions, followed by probation for 24 months, in Order No.
26 871258, entitled In the Matter of the Disciplinary Action Against
27 Professional Nurse License No. RN059278 Issues To: Nancy Ellen

1 Rifkind, for violating the terms and conditions of probation
2 pursuant to the Consent Agreement and Order dated October 6,
3 1988, wherein she violated A.C.R.R. R4-19-403(1) (Failure to
4 maintain minimum standards of acceptable and prevailing nursing
5 practice) and R4-19-403(12) (Obtaining, possessing, administering
6 or using any narcotic or controlled substance in violation of
7 law).

8 Such conduct would constitute grounds for discipline in
9 California under Business and Professions Code section 2761(a) on
10 the grounds of unprofessional conduct as defined in section
11 2762(a) (obtain or possess in violation of law) of that code.

12
13 WHEREFORE, complainant prays that a hearing be held and
14 that the Board of Registered Nursing make its order:

15 1. Suspending or revoking registered nurse license
16 number K 428060, issued to Nancy Ellen Rifkind.

17 2. Taking such other and further action as may be
18 deemed proper and appropriate.

19 DATED: 4-2-93

20
21
22 *Catherine M. Puri*
23 CATHERINE M. PURI, R.N., Ph.D.
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California

Complainant

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